

Office of Chief Counsel
Internal Revenue Service

memorandum

CC: [REDACTED] TL-N-5154-99

GLBloom

date: SEP 28 1999

to: Chief, Examination Division, [REDACTED] District

from: District Counsel, [REDACTED] District, [REDACTED]

subject: **Advisory Opinion**
Depreciation Asset Class for Natural Gas Gathering Systems

Taxpayer: [REDACTED]

TIN: [REDACTED]

Years: [REDACTED], inclusive

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

ISSUE

Whether the holding in Duke Energy Natural Gas Corp. v. Commissioner, 172 F.3d 1255 (10th Cir. 1999), rev'g 109 T.C. 416 (1997), that natural gas gathering systems belong to Asset Class 13.2, with a recovery period of seven years rather than Asset Class 46.0, with a recovery period of fifteen years, should be followed by the Service in cases where jurisdiction lies outside the Tenth Circuit Court of Appeals.

DISCUSSION AND CONCLUSION

This is in response to your request for advice received by this office on September 2, 1999.

After initially agreeing with Examination's determination that natural gas gathering systems are property belonging to Asset Class 46.0, with a recovery period of fifteen years, the taxpayer filed claims for each of the years [REDACTED] inclusive, based upon the decision reached by the Tenth Circuit in Duke Energy that such property properly belongs to Asset Class 13.2, with a recovery period of seven years.

The position taken by the Service in Duke Energy and the authorities relied upon therein, parallels the position taken and authorities you cite in the proposed RAR attached to your inquiry. Chief Counsel is in the process of preparing an Action on Decision to reflect nonacquiescence in the Duke Energy decision. At the present time, final approval has not been granted to issue the AOD. A case involving the same issue is presently set for trial in March, 2000, before the U.S. Tax Court. A decision in that case will be appealable to the Eighth Circuit Court of Appeals. [REDACTED] is situated within the Eighth Circuit. In order to be consistent with the position taken in the pending Tax Court litigation within the Eighth Circuit, [REDACTED]'s claims should be disallowed. Cases involving this issue outside the Tenth Circuit should be reviewed on a case-by-case basis. Thus, this advice pertains solely to [REDACTED].

If we can be of further assistance in this matter, please contact Attorney [REDACTED]

[REDACTED]
Assistant District Counsel

cc: Assistant Regional Counsel (TL) [REDACTED]
Assistant Regional Counsel (LC) [REDACTED]